IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1812 OF 2005

Manoj Kumar Sarangi .. Petitioner.

Versus

Dy.Commissioner of Customs (P)
R & I & Anr. .. Respondents.

Mr.A.P.Mundargi, Senior Counsel i/b.R.Ramamurthy for petitioner.
Mrs.U.V.Kejriwal i/b.Mr.D.N.Salvi for respondent No.1 - Union of India.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th June, 2007.

ORAL JUDGEMENT :-

1. By this petition under Article 227 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure, 1973, the petitioner prays that proceedings in Criminal Case No.9/CW/2001, pending before the Additional Chief Metropolitan Magistrate's 3rd Court, Esplanade, Mumbai be quashed.

2. The above mentioned complaint is filed by

the Deputy Commissioner of Customs (P) R & I, Customs, Prosecution Cell, Mumbai against three persons. The petitioner is arraigned as accused No.2 therein.

3. The prosecution case in brief is that on 17th November, 1997, acting on the information given, the officers of Sahar Air Cargo, Preventive Unit, Mumbai Customs intercepted one Siddharth Tambe at the exit gate of Air Cargo Complex Sahar. This person was carrying two packages. This person revealed that the consignment was cleared vide Bill of Entry No.8269 dated 13th November, 1997 and the name and address of the importer was revealed as Kanchan Marketing, Ahmedabad. The Bill of Entry showed that two packages were weighed 193.4 kgs and description of goods was given as fuses (sample of NCV). The Bill of Entry had I.E. Code No.0895003384 which refers to Kanchan Marketing, Ahmedabad. The declared value was

shown as Rs.2,366/- which was assessed to Rs.5,000/- by the petitioner-accused No.2, who was then posted as an Appraising Officer at A.A.I. Warehouse of Air Cargo Complex, Sahar. The duty of Rs.2,965/- was paid in cash. The examination report was also written by the present petitioner.

4. The department not being satisfied with the declaration, the packages were examined and dutiable goods like 700 Skin Cameras and 18 Cordless Telephones valued at Rs.2,64,000/- were recovered and seized under panchanama.

5. The statement of the said Siddharth Tambe was recorded u/s.108 of the Customs Act. He admitted his guilt of clearing the consignment as per the orders of one Anil Mehta and for which he received monetary consideration of Rs.1,500/-.

6. It is not necessary to refer to the

prosecution allegations with regard to the other accused.

7. The case of the prosecution as far as the present petitioner is concerned is that the investigations reveal that the present accused, who was working as an Appraising Officer and at the relevant time was posted at Sahar Air Cargo Complex, revealed a peculiar feature of his appraising the consignments. This allegation is to be found at paragraph 30 of the complaint. However, it is also stated in the complaint itself that the petitioner denied his signatures on the bills of the entries which were produced for his perusal. He had specifically stated that the rubber stamp was lying at his residence. The rubber stamp after residential premises were searched came to be seized under panchanama alongwith some other documents. The petitioner's signatures on the samples and specimen handwriting was taken. In paragraph 33 of the

complaint this is what is stated :-

> "33. Since Appraiser Shri.M.K.Sarangi had preferred to deny his signatures/examination/reports / initials on the above mentioned 11 premarked Bs/Entry, help of forensic science was taken. Accordingly, the eleven premarked Bs/Entry and the statement of the Appraiser dated 6.4.98 and his rubber stamp recovered from his residence were sent to the Government Examiner of Questioned Documents, Bureau of Research and Development, Ministry of Home Affairs, CF-1 Complex Ramanathpuram, Hyderabad. By it’s report dt.29.4.98 the Government Examiner of Questioned Documents certified that the signatures on the abovementioned 11 premarked Bs/Entry tallied with the signature of A.O. Shri.M.K.Sarangi in his statement

dated 6.4.98 and also the rubber stamp of Shri.M.K.Sarangi of the 11 Bs/E was the same one which was recovered from his residence."

8. After referring to the other statements, paragraphs 37 and 42 of the complaint proceeds to read thus :-

"37. Investigations revealed that Shri.Bipin Ballani, the main brain in this whole smuggling racket, has used his various firms viz. 1.Kanchan Marketing, 2.Star Exporters & Importers, 3.Active Electronics, 4.N.K.Traders, 5.Evergreen Enterprises; 6.Rahul Enterprises which are owned/managed by him of which Active Electronics, Star Exporters and Importers, Evergreen Enterprises and N.K.Traders are closed, or are having fictitious addresses and have used their

I.E. Codes to import of dutiable goods and betting them cleared by misdeclaring them as samples of NCV to evade the appropriate duty of Customs in connivance with Shri.Bhagwan, Shri.Tambe, Shri.Anil Mehta, Shri.Nilesh Aiya and Shri.M.K.Sarangi, Appraiser of A.C.C."

42. Investigations further revealed that the Appraiser Shri.M.K.Sarangi used to accept the misdeclarations made in the Bs/E Anil Mehta gave through Nilesh Aiya and assessed the same accordingly without reference to actual goods imported and covered by Bs/E. For this work he used to receive monetary consideration from Anil Mehta through the hands of Nilesh Aiya he also assessed those Bs/E goods covered by which were lying in the light shed import warehouse of ACC, Sahar while he was posted at AAI warehouse of ACC,

> Sahar, Mr.Sarangi thus assessed six Bs/E which were misdeclared by Anil Mehta as per the say of Bipin Ballani and with the assistance of Nilesh Aiya. Two of these successfully cleared were delivered from AAI Warehouse (consignments cleared by B/E No.1671/20.9.97 and 1670/20.9.97) and the remaining two cleared successfully were delivered from the Light Import shed of A.C.C. Sahar (consignments cleared vide B/E No.08208/13.11.97 and 03352/6.11.97) prior to the two consignments seized by SACPU on 17.11.99 (B/E No.08269/13.11.97) and 19.11.97 B/E No.08267/13.11.97."

9. This complaint was lodged with the above Court on 17th January, 2001.

10. The petitioner contends that prior to the filing of this complaint, a FIR was lodged by the

Customs Department and copy of the same is at page 126 of this petition paper book (Exhibit-B). The FIR alleged offences punishable u/s.120-B of IPC r/w.420 IPC & 13(2) r/w.13(1) (d) of the Prevention of Corruption Act, 1988. A perusal of this FIR shows that the petitioner is accused No.1 whereas the proprietor of Kanchan Marketing, Ahmedabad Shri.Bipin Ballani is accused No.2, Shri.Nilesh Aiya, clerk of M/s.Accurate Shipping Agency (Customs House Agency of Shri.Ballani) is accused No.3 and Shri.Anil Mehta, who is the clerk of Shri.Bipin Ballani, is accused No.4. The FIR was lodged with CBI, ACB, Mumbai. The FIR is dated 7th December, 1998.

11. The petitioner states that after investigations were concluded, CBI filed a closure report dated 28th January, 2000 before the Special Judge, In-charge of CBI cases.

12. At the same time, a departmental

charge-sheet was issued to the petitioner on 15th December, 2000.

13. It is thereafter that the present private complaint is filed by the Deputy Commissioner (respondent No.1 before me).

14. The grievance of the petitioner is that he had moved Criminal Writ Petition No.1556 of 2002 as no action was taken pursuant to the closure report in the CBI special case. This Court disposed of the said writ petition on 17th January, 2003 directing that the Court should pass appropriate orders on the closure report. Thereafter, the Special Judge to whom the CBI case was assigned, passed an order dated 20th February, 2003 on Miscellaneous Application No.36 of 2003, which reads thus :-

CORAM : H.H.J.SHRI.U.D.SALVI.

"SPP Gupta for the CBI absent. Heard. Perused. CBI finds nothing worthy for filing of charge-sheet. Hence, the case is closed. M.A.No.36/2003 stands disposed of accordingly.

SD/-"

15. My attention is also invited by the petitioner to an order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai in Appeal No.C/691-693, 922-924/99 arising out of an order passed on 26th March, 1999 by the Commissioner of Customs (Preventive), Mumbai. These are adjudication proceedings and the Commissioner of Customs had imposed penalty of Rs.50,000/- on the petitioner by invoking Section 112(a) of the Customs Act. The Commissioner during the adjudication proceedings relied upon the same report of the handwriting expert and other materials, which

have been reproduced by him as part of the investigations and documents in the private complaint.

16. The Tribunal after hearing the petitioner’s Advocate so also the departmental representative has observed in paragraph 10 of its order as under :-

> "10. The issue involved is one of appreciation of evidence. The Commissioner seems to be complimenting the opinion of handwriting expert when he says that he himself finds lot of similarities between Shri.M.K.Sarangi’s handwriting and the one found on the impugned Bs/E. The decision cited by the Ld advocate Shri.J.C.Patel is relevant and goes to the root of the problem. The handwriting expert has not given any reasons as to why he comes to a

particular finding and the Commissioner does not either. What remain are the statements of Anil Mehta who has been only told by the clerk of CHA that he is getting the goods cleared through Shri.Sarangi and that he is paying money for getting the job done. Shri. Anil Mehta himself has not approached Sarangi for clearance of the impugned goods. Shri.Aiya seems to be collecting money from Anil Mehta. whether he actually paid any part of it to Shri.Sarangi has not been brought out. When the appellant (M.K.Sarangi) denies that he has ever assessed/examined the impugned Bs/E it becomes imperative to lead evidence other than that of a co-accused to establish that indeed, Shri.Sarangi abetted the offence of smuggling for a penalty to be imposed under Section 112(a) of the Customs Act. No such evidence has been

> brought out. Even the CBI who investigated this case did not find enough evidence to proceed either against Shri.Sarangi or Aiya. The problem is that there is just no evidence against the appellant (M.K.Sarangi) and the Commissioner only made his case worse by not allowing the cross-examination of the handwriting expert."

17. Thus, the petitioner’s appeal was allowed. The order of the Commissioner imposing penalty upon the petitioner was quashed and set aside by the Tribunal. The department of Customs has not challenged this order by instituting further proceedings. In other words, the petitioner contends that the department has accepted the order of the Appellate Tribunal.

18. In the backdrop of above, the argument of Shri.Mundargi, learned Senior Counsel appearing

for the petitioner is that the private complaint which is filed alleging offences punishable under Sections 132, 135(1)(a) r/w. Section 135 (I) (ii) and 135(1)(b) r/w Section 135(1)(ii) of the Customs Act and Section 120(b) of IPC would not survive. In other words, his argument is that on the same allegation and same material, an offence punishable under the Customs Act is lodged against the present petitioner. The petitioner cannot be prosecuted now after the order of the Customs Tribunal in adjudication proceedings and that of the Special Judge in the CBI case. It is contended that the order passed by the Customs, Excise and Service Tax Appellate Tribunal is dated 6th September, 2004. It may be true that the adjudication proceedings and the prosecution now launched can go on simultaneously and irrespective of the outcome of the CBI special case but their continuation is an abuse of process of the Court. In the present facts and circumstances when the department was unable to

prove the charge in adjudication proceedings where the degree of proof is lesser than that of a criminal prosecution, then, it is unlikely that the prosecution would be able to bring home the charge in the criminal case. The petitioner, in such circumstances being forced to go through the trial in the criminal case is nothing but an abuse of the process of the Court and for securing the ends of justice otherwise this is a fit case where this Court should quash the proceedings in the Criminal Case No.9/CW/2001 pending on the file of the Additional Chief Metropolitan Magistrate's 3rd Court, Esplanade, Mumbai. Shri.Mundargi in support of his submissions relied upon the decisions of this Court reported in **1997 (VI) LJ 711 (Ramniklal Premchand Mehta & Anr. v/s Union of India & Ors.) and 1998 (VI) LJ 394 (Ramniklal Premchand Mehta v/s.Union of India and others)**. Reliance is also placed upon the decisions of other High Courts. Reliance is also placed on a judgement

of the Hon'ble Supreme Court in the case of **G.L.Didwania v/s.Income Tax Officer reported in 1999 (108) Excise Law Times 16 (S.C.)**. Finally Mr.Mundargi also relied upon a decision delivered by me in the case of **Raichand C. Jain v/s.Surendra Prasad reported in 2006(3) AIR Bom R 411.**

19. On the other hand, Mrs.Kejariwal, appearing for the respondent No.1 submits that the criminal case and adjudication proceedings are two distinct cases. They are independent in nature. In adjudication proceedings so also where penalties are sought to be levied during the course thereof, the department is concerned with the aspect of evasion of duty and clearance of goods without payment of the same. It is in that context, the penalties are levied. The Customs Act contains distinct provisions carving out offences and they cannot be confused with the adjudication and penalties. Chapter XVI of the

Customs Act is titled as "Offences and Prosecutions". The present offence is of false declaration, false documents and whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs knowing or having reason to believe that such declaration, statement or document is false in any material particular, then, he is liable to be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

20. Section 135, under which the petitioner is charged, deals with evasion of duty or prohibitions. Her submission is that when two independent proceedings are going on against the petitioner, then, by no stretch of imagination can it be said that the criminal prosecution would be affected by the outcome of the adjudication proceedings. She submits that both

prosecution and adjudication proceedings can simultaneously be launched and pursued. In such circumstances and in public interest so also considering the gravity of the offences, this is not a fit case for exercise of inherent powers of this Court.

21. In support of her submissions, Mrs.Kejariwal has relied upon the decision of the Hon'ble Supreme Court reported in **(2006) 2 S.C.C. (Cri) 221 in the matter of Standard Chartered Bank & Ors. v/s.Directorate of Enforcement & Ors.**

22. For properly appreciating the rival contentions, it would be worthwhile if reference is made to the order passed by the Special Court / Judge on the report of the Central Bureau of Investigations.

23. The First Information Report, which was

lodged on 7th December, 1998, demonstrates that the petitioner was charged with offences of cheating and criminal conspiracy alongwith those punishable under Section 13(2) r/w.Section 13(1)(d) of the Prevention of Corruption Act, 1988. It was specifically alleged as far as the petitioner is concerned that he cleared the consignments having valuable electronic items and other items of different parties under different bills of entries at very low rate of custom duty knowing fully well the real value of the goods and the conspiracy to cause revenue loss, after accepting illegal gratification.

24. However, a final report under Section 169 r/w. Section 173 of the Code of Criminal Procedure was filed in the Special Court and it was clearly stated that the investigation revealed that electronic goods in question were imported by Kanchan Marketing and Star Exporters of Ahmedabad. There is no sufficient evidence

according to the prosecution to show that the bills of entries were marked to the petitioner but reliance was placed on the opinion of the handwriting expert. However, on the own showing of the prosecution, credibility of the other documents including the panchanama is questionable on account of the lapses on the part of the investigating machinery. Thus, the prosecution intended to close the case alleging serious charges of cheating, Bribery and corruption so also criminal conspiracy on the ground that the material with it is not sufficient to bring home the charge. Instead it recommended departmental action against the petitioner. On this report, no order was passed and, therefore, a writ petition was filed in this Court. Thereafter, the final report was filed on 30th January, 2003 in pursuance of the directions of this Court and the order as reproduced above was passed on the final report.

25. The present case is based upon self-same allegations. All that is alleged is that the charge is under Customs Act and not under I.P.C. but Prevention of Corruption Act. However, the acts of omissions and commissions, if any, are the same. The transaction is the same. The documents are also the same. It is in this context that the adjudication proceedings assume some significance. Although an order was passed by the Commissioner of Customs Act (Preventive), Mumbai, that order was impugned by the petitioner before the Tribunal by filing an appeal. The Tribunal has after referring to the allegations in the show cause notice, the explanation thereto of the parties so also the documents on record clearly observed that no case of whatsoever nature is made out to proceed against the petitioner. In fact, the observations are that there is no evidence against the petitioner. The matter was made worst by the Commissioner in these circumstances inasmuch as he did not permit

cross-examination of the handwriting expert. Thus, there is substance in the contention of Mr.Mundargi that paragraph 10 of the order passed by the Tribunal would show that further continuation of the proceedings before the Magistrate in the subject private complaint is nothing but an abuse of the process of the Court.

26. There is no necessity of entering into the larger controversy inasmuch as Mr.Mundargi would contend that the authorities / ruling relied upon by Mrs.Kejriwal is not for the proposition that continuation of such proceedings cannot be made subject matter of a petition under Section 482 of the Code of Criminal Procedure r/w. Article 227 of the Constitution of India, while it may be true that both proceedings being independent and their continuation is not bad in law. Their continuance cannot also be invalid and illegal in all cases, but, if it is demonstrated that their continuance would be an

abuse of the process of the Court, then, in the interest of justice, the inherent powers of this Court can always be invoked and applied.

27. I had an occasion to consider similar controversy in the case of **Raichand C. Jain v/s. Surendra Prasad reported in 2006 (3) AIR Bom R 411** wherein, in paragraphs 20 and 24, I had observed thus :-

> "20. However, as has been stated above, it is not as if both proceedings cannot go on. The nature of the proceedings has also been noted and the difference spelt out in the Supreme Court decision referred to above. It is equally true that at the stage where the criminal proceedings are today, namely, framing of charge, it cannot be said that their continuance further is impermissible in law. However, it is also well settled

that if the continuation of the criminal proceedings after final conclusion of adjudication proceedings is an abuse of process of the Court, then certainly powers u/s.482 of Cr.P.C. can be exercised. Precisely this has been done in the case of U.N.Mehta by a learned Single Judge of this Court. There the charges were under the FERA. In that case, adjudication proceedings were in favour of the applicant before this Court. The Department did not carry the matter further and allowed the order of the Special Director to gain finality. In these circumstances, after noticing the judgements referred to above, the learned Single Judge has quashed the criminal proceedings. The proceedings have been quashed after noticing the fact that the Department has accepted the finding that the petitioner before this

Court has not admitted to transfer of the foreign currency. In doing so, the learned Single Judge has referred to a decision rendered by Delhi High Court to this effect that once the Department does not succeed in proving the charge when the degree of proof is not as rigorous as criminal trial, then an attempt to foist criminal law, when, the degree of proof is more strict cannot be understood.

24. It is not the case of Shri.Salvi that in exercise of inherent powers of this Court the reliefs prayed for cannot be granted. He does not dispute that provision of FERA apart, in exercise of such powers this Court can quash the criminal proceedings if their continuation amounts to an abuse of the process of the Court, further, he does not dispute that they can be exercised to

secure ends of justice. Of course, these powers are to be sparingly exercised. A case must be made out for exercise of the same. In my view, applicants have out such a case. It is not as if materials other than those before the Adjudicating Authority are available. The nature and degree of proof in a criminal trial being strict and more rigorous, then, in the present facts and circumstance, allowing criminal prosecution to continue is not in the interest of justice. The scope of inherent powers of this Court is by now well settled. The principles in that behalf have been reiterated in a decision reported in **AIR-2005-SC-9 Zandu Pharma Ltd. v/s. Md.Sharaful Haque and others.** Para 8 of this decision reads thus :-

"8. Exercise of power under Section 482 of the Code in a case of this nature is

the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possible arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them

by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" when the law gives a person anything it gives him that without which it cannot exist. While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is

justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the

> question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether an offence is made out even if the allegations are accepted in toto."

28. In the light of the said provisions noted above, in my view, considering the fact that the petitioner has been exonerated in adjudication proceedings where the rigour is not what is required in the criminal proceedings, then, this is a fit case where regular criminal case should be quashed. The standard of proof required in the criminal case is much stronger and rigorous. In adjudication proceedings itself, the respondents could not bring home the charge. It is not now possible for the prosecution to prove the case against the petitioner, more so, in the light of its report in the C.B.I. special case. In such circumstances and when the participation

and role of the petitioner in the entire transaction is in grave doubt, then, interest of justice would be subserved by holding that continuation of the subject criminal proceedings is an abuse of the process of the Court. The prosecution having not been able to succeed in adjudication proceedings and the facts of the present case being peculiar inasmuch as the C.B.I. Special Case is also dropped, then, forcing the petitioner to go through a trial would not be in the interest of justice but would be a clear abuse of the process of the Court.

29. In the above facts and circumstances and for the reasons recorded above, petition deserves to succeed. Rule is accordingly made absolute in terms of prayer clause (a). Regular Criminal Case and criminal proceedings are accordingly quashed.

(S.C.DHARMADHIKARI, J.)